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IN THE DISTRICT COURT OF OKLAHOMA COUNTY IN DISTRICT COURT
STATE OF OKLAHOMA OKLAHOMA COUNTY

OKLAHOMA EDUCATIONAL TELEVISION)
AUTHORITY FOUNDATION, INC.,)
Plaintiff,)
vs.)
OKLAHOMA EDUCATIONAL)
TELEVISION AUTHORITY,)
Defendant/Third-Party Plaintiff,)
and)
CYNTHIA REID, MIA MASCARIN OVEN,)
LINDA GARDNER, P. DAVID GILLETT,)
AND DAPHNE DOWDY,)
Third-Party Defendants)

JAN - 7 2019

RICK WARREN
COURT CLERK

30 _____

Case No. CJ-2018-6717

FOUNDATION'S RESPONSE TO AUTHORITY'S MOTION TO DISMISS

The Plaintiff, Oklahoma Educational Television Authority Foundation, Inc. (the “Foundation”) submits this response to the Motion to Dismiss for failure to state a claim (the “Motion”) filed by the Defendant, Oklahoma Educational Television Authority (the “Authority”) as follows:

THE PARTIES

The Authority is a public body and authority which is an instrumentality of the State of Oklahoma. *See* OKLA. STAT. tit. 70, § 23-105. It is the licensee for the broadcast license of public educational television, commonly known as “OETA.” The Authority is not only a creature of the State of Oklahoma, but also a recipient of public funding generated from Oklahoma taxpayers.

In contrast, the Foundation is a private 501(c)(3) corporation. Unlike the Authority, the Foundation was not created by the State of Oklahoma, nor is it owned or operated by the Authority or any division of the State of Oklahoma. It was organized under the laws of the State of Oklahoma as a private, not-for-profit corporation and was determined by the IRS to be tax exempt. Although created under the laws of Oklahoma, it is not owned by the State of Oklahoma or the Authority, just like any private corporation organized under Oklahoma law is not “owned” by the state.

The Foundation is governed by a Board of Trustees, who serve on a volunteer basis, for the benefit of the Foundation. The trustees of the Foundation donate their time and energies to the Foundation and receive no compensation from the State of Oklahoma, Board of Regents, or public schools. No law, statute, rule or regulation within the State of Oklahoma subjects the Foundation to the control of the Authority. It is the Authority’s current attempt to control the Foundation which brings the Foundation and the Authority before this Court.

THE DISPUTE

In its Motion, the Authority on multiple occasions asserts that the Foundation is seeking to interfere with the Authority’s operations, attempt a “coup,” and engage in “overreaching and detrimental activities” including production of content, claimed failed leadership, and lack of an operating agreement. The Authority’s assertions in the Motion are not only false (as is proven in the various undisputed attachments to the Petition) but also a mischaracterization of the relief sought by the Foundation. The Foundation does **not** seek to control the Authority; rather, the Foundation seeks freedom from the Authority’s

management errors and deficiencies and the Authority's attacks on the Foundation's ability to administer the Foundation's assets and efforts to fulfill its mission.

To determine exactly which entity it seeks to control the other, the Foundation directs the Court's attention to the "Control Agreement" issued by the Authority, which contains a proposed requirement that the Foundation convey all of its assets to the Authority upon request by the Authority, along with its subsequent resolution of the Authority's Board and the press release issued by the Authority's chairman demanding that the Foundation execute the Control Agreement. *See Petition* at ¶¶ 12-17, Exhibits 3 and 4. The Foundation seeks not to control the Authority, but to be determined to be free of the Authority's attacks on the Foundation's activities so that it can exercise its lawful independence in pursuit of its mission and forbear from rewarding the volumes of deficient management recently employed by the Authority and demonstrated in the allegations contained in the Petition, each of which is buttressed and validated by the many exhibits.¹

THE ALLEGATIONS

In the Petition, the Foundation authored adequate and substantial instances of the Authority's deficiencies. It wants nothing more than the ability to consider all facts and circumstances, including but not limited to those specified in the Petition, in the pursuit of its mission to truly support public educational television and OETA.

The receipt of information related to the management and operation of the Authority is critical to the Foundation's performance of its duties. One duty is to raise funds. Another duty is to disburse funds. Without information, the Foundation cannot make the full and accurate

¹ If there is any doubt as to the Authority's predatory conduct to control the Foundation and its Assets, those doubts are all removed with a cursory review of the Authority's Counterclaim which seeks to gut the Foundation (a private, not-for-profit corporation) of its assets. *See Counterclaim Petition*, at ¶¶ 32 and 37(D).

disclosures to its donors, nor can it determine the propriety of its discretionary disbursements to the Authority. To that end, in the Petition, the Foundation alleged:

Although the Foundation has provided more than \$67,500,000 to or for the benefit of OETA since 1989, OETA has taken and continues to take actions which are directly adverse to the Foundation, as more specifically set forth in this Petition. The Foundation has a legal interest in its assets, its ability to continue to raise funds from donors, its ability to protect its assets, and the proprietary protection of its assets afforded to it under that law, and its ongoing operations as a not-for-profit corporation, all of which are for the benefit of the OETA, and all of which are being impaired by OETA. As set forth below, the issue involved is ripe for judicial determination. **The sole relief requested by the Foundation is that this Court rule that the Foundation may consider all facts, including but not limited to the facts alleged in this Petition, when determining the amount and timing of distributions to be made by the Foundation to OETA, or by the Foundation to OETA, or by the Foundation for the benefit of OETA.**

Petition, at ¶¶ 26-29 (emphasis added).

Clearly the Foundation does not seek to control the Authority. It only seeks the lawful independence it is entitled to in pursuit of its mission.

Arguments and Authorities

In considering the Motion, the Court must look only to the allegations of the Petition and construe them in a light most favorable to the Foundation. *Indiana Nat. Bank v. State Dept. of Human Services*, 1994 OK 98, 880 P.2d 371, 375. Generally, a claim may be dismissed as a matter of law for two reasons: (1) lack of any cognizable legal theory, or (2) insufficient facts under a cognizable legal theory. *Id.* at ¶ 4, 880 P.2d at 375; *Rogers v. Quiktrip Corp.*, 2010 OK 3, ¶ 4, 230 P.3d 853, 855-56. “A pleading must not be dismissed for failure to state a legally cognizable claim unless the allegations indicate **beyond any doubt** that the litigant can prove no set of facts which would entitle the plaintiff to relief.” *Tuffy's, Inc. v. City of Okla. City, Okla.*, 2009 OK 4, ¶ 6, 212 P.3d 1158, 1162 (emphasis added).

I. The Petition States a Claim Upon Which Relief Can Be Granted.

In the Motion, the Authority mischaracterizes the applicable law that governs the Foundation's activities and the nature of the Foundation's claims in the Petition in an attempt to distract from the fact that the Petition validly pleads a claim for declaratory relief. The Court should look past these arguments and deny the Motion.

A. The Foundation Is a Private Corporation With All of the Powers Under the Oklahoma Business Corporation Act.

In the Motion, the Authority argues that the Petition fails to assert a cognizable legal theory because the Foundation's exercise of discretion when making contributions to the Authority somehow oversteps limitations imposed by Oklahoma law, claiming that "the only task assigned the Authority's chosen charitable auxiliary by the Oklahoma Legislature," i.e. the Foundation, is "to receive, invest, and expend funds in support of the Authority." *See Motion*, at 2. This is not so. The Foundation is a private, nonprofit corporation and has all the powers Oklahoma nonprofit corporations are authorized to exercise under Title 18 of the Oklahoma Statutes.

Although the Authority cites to no authority whatsoever in the Motion itself to support its assertions as to the alleged limitations on the Foundation's authority, a review of the Authority's Counterclaims Against Plaintiff Foundation and Third-Party Petition Against Third-Party Defendants (the "Counterclaim Petition") reveals that the Authority's arguments are based on Senate Bill No. 454 (1982), the session law pursuant to which the legislature appropriated the Authority's annual budget for the 1982-1983 fiscal year; it provides in relevant part:

It is the intent of the Oklahoma Legislature that the [Authority] seek ways to encourage contributions by private individuals, companies, foundations, corporations and others in the private and public sectors by cooperating with a

public, nonprofit foundation. Such foundation would operate for the exclusive purpose of receiving, investing and expending privately donated nonstate appropriated funds for educational and eleemosynary purposes related to the support, promotion, development and growth of educational and public broadcasting in Oklahoma. The [Authority] shall make a full report annually on the activities of the nonprofit foundation to the Governor and the Legislature.

1982 OKLA. SESS. LAWS. 606 (“SB454”).

This provision merely **encourages the Authority** to “seek ways to encourage contributions . . . by cooperating with a public, nonprofit foundation.” *See id.* SB454 did not create the Foundation or impose any limitations on the powers or activities of the Foundation. *Id.* **It imposes no legal obligations on the Foundation whatsoever.** *Id.* Indeed, there is no Oklahoma statute, regulation, or other legal authority that serves as enabling legislation for the Foundation or imposes any specific limitations on its powers. The Authority’s arguments regarding the supposed limitations imposed on the Foundation’s activities by the Oklahoma legislature are simply untrue.

As described above, the Foundation is a private corporation created pursuant to Title 18 of the Oklahoma Statutes, **not** an instrumentality of the State of Oklahoma like the Authority. The Foundation has every right to exercise any action authorized under its Articles of Incorporation and the law which it was created: the Oklahoma Business Corporation Act, OKLA. STAT. tit. 18, § 851, *et seq.* (the “OBCA”). At the time the Foundation was created in 1983, the OBCA provided that “[a] nonprofit corporation may be formed under this act for any lawful purpose or purposes.” OKLA. STAT. tit. 18, § 852 (1981). It further provided that nonprofit corporations possess all of the general powers . . . of a domestic corporation.”

OKLA. STAT. tit. 18, § 856 (1981).²

The Foundation's Articles of Incorporation, which are attached to the Petition as Exhibit 1, state that the Foundation's purpose is to "receive, invest and expend privately donated non-state appropriated funds for educational purposes related to the support, promotion, development and growth of educational and public broadcasting in Oklahoma," in line with SB454's language encouraging the Authority to cooperate with a charitable foundation dedicated to that purpose. *See Petition*, at Exhibit 1, Article V. The Articles go on to state that the powers of the Foundation include the power "to exercise any, all and every power to which a non-profit corporation organized under the provisions of the laws of the State of Oklahoma for scientific and educational purposes can be authorized to exercise." *Id.* at Article VI, Section (j). Hence, the Foundation possesses all powers authorized by Oklahoma law to effectuate that purpose consistent with the fiduciary duty the Foundation owes to its donors in accordance with its Articles of Incorporation.

Legislative authorization is not required for the Foundation to exercise the powers enumerated in its Articles of Incorporation under any provision of Title 18, the statutes dealing with the Authority in Title 70, or any other provision of Oklahoma law. Any party that desires to establish a nonprofit corporation for the same purpose as that of the Foundation could do so pursuant to the requirements of Title 18, and that corporation could

² After the Foundation was formed in 1983, the Oklahoma legislature subsequently repealed the OBCA in 1986 and replaced it with the Oklahoma General Corporation Act, OKLA. STAT. tit. 18, § 1001 *et seq.* However, the General Corporation Act also provides that "[a] corporation may be incorporated or organized pursuant to the provisions of the Oklahoma General Corporation Act to conduct or promote any lawful business or purposes, except as may otherwise be provided by the Constitution or other law of this state," OKLA. STAT. tit. 18, § 1005(B), and that all corporations "shall possess and may exercise all the powers and privileges granted by the provisions of the Oklahoma General Corporation Act or by any other law or by its certificate of incorporation, together with any powers incidental thereto. *Id.* § 1015.

be vested with the exact same powers as the Foundation, i.e. to take any action authorized by Oklahoma law. The Foundation filed this action to obtain a judicial declaration affirming that the Foundation, like any other Oklahoma corporation, possesses the legal right to exercise discretion and consider relevant circumstances in its decisions as to the timing and amount of its charitable expenditures in pursuit of its lawful purpose.

The Authority's attempts to portray the Foundation as a creation of the legislature with strict limitations on its powers or discretion are wrong. The Court should disregard these statements in ruling on the Motion.

B. The Foundation Is Not Seeking a Declaration of Its Rights Under the Operating Agreement Between the Foundation and Authority.

The Motion makes repeated references to alleged rights of the parties under the operating agreement executed by the Foundation and the Authority in 1992 (the “Agreement”), and argues that the Petition does not state a claim upon which relief can be granted because the Agreement does not grant the Foundation the rights asserted in the Petition.³ These arguments are misguided because the Foundation is not seeking a declaration of its rights under the Agreement.

The only relief requested by the Foundation is for the Court make a declaration of the Foundation’s right to “consider all facts, including but not limited to the facts alleged in this Petition, in determining the amount and timing of distributions to be made by the Foundation to the Authority, or by the Foundation for the benefit of the Authority.” *See Petition*, at 29. As described in Proposition I(A), the Foundation is not asserting that it has this right pursuant

³ In the Motion, the Authority also claims that the Foundation is unwilling to negotiate a new operating agreement with the Authority. Despite the fact that these allegations are wholly irrelevant to the Foundation’s claims in the Petition or the merits of the Motion, the Foundation would note that it is in possession of overwhelming evidence demonstrating that these allegations are completely false.

to the Agreement, but rather pursuant to its own Articles of Incorporation and applicable Oklahoma law governing corporate entities. *See* OKLA. STAT. tit. 12, § 1651 (stating that courts may issue declaratory judgments regarding “rights, status, or other legal relations, including but not limited to a determination of the construction or validity of any foreign judgment or decree, deed, contract, trust, or **other instrument** or agreement or of any statute, municipal ordinance, or other governmental regulation[.]”) (emphasis added).

On multiple occasions the Authority criticizes the Foundation for not attaching the Agreement to the Petition. It should be noted that nothing bars the Authority from submitting a copy of the Agreement to the Court, but it likewise has chosen not to do so. However, to denude any argument that the Foundation is attempting to forbear from disclosing the current Agreement, a copy of the Agreement is attached to this Response as **Exhibit “A.”**

A review of the Agreement makes it clear that the Foundation’s claim for declaratory relief in the Petition does not depend on the Agreement, and is not affected by the provisions of that contract: the Agreement does not address the issue of the Foundation’s right to consider relevant facts in making distributions to or for the benefit of the Authority or any other issue implicated by the Petition. The Agreement is completely irrelevant to the Foundation’s claims and any discussion of the parties’ rights arising under the Agreement should be disregarded by the Court in ruling on the Motion.

II. An Actual Controversy Exists Between the Authority and the Foundation.

The Authority also argues in its Motion that there is no actual controversy between the Authority and the Foundation that would allow the Court to issue a declaratory judgment. This contention is rendered absurd by the Authority’s own arguments in the Motion and its Counterclaim.

Oklahoma district courts have the broad authority to issue declaratory judgments “in cases of actual controversy.” OKLA. STAT. tit. 12, § 1651. The Oklahoma Supreme Court has adopted the following conditions that must be present in order to provide declaratory relief:

1. There must exist a justiciable controversy in which a claim of right is asserted against one who has an interest in contesting it;
2. The controversy must be between parties whose interests are adverse;
3. The party seeking declaratory relief must have a legally protectable interest in the controversy; and
4. The issue involved in the controversy must be ripe for judicial determination.

City of Blackwell v. Wooderson, 2017 OK CIV APP 33, ¶ 8, 397 P.3d 491, 494-95 (citing *Gordon v. Followell*, 1964 OK 74, ¶ 18, 391 P.2d 242). In order for a justiciable controversy to exist, the following factors must be satisfied: (1) the dispute must be definite and concrete, (2) it must concern legal relations among parties with adverse interests, and (3) the dispute must be “real and substantial so as to be capable of a decision granting or denying specific relief of a conclusive nature.” *Easterwood v. Choctaw County District Attorney*, 2002 OK CIV APP 41, ¶ 11, 45 P.3d 436 (citing *Dank v. Benson*, 2000 OK 40, ¶ 8, 5 P.3d 1088, 1091).

As described above, the Foundation filed this action seeking a declaration that it has the following rights:

For the reasons set forth above, the Foundation seeks a declaratory judgment by this Court determining that **the Foundation may consider all facts, including but not limited to the facts alleged in this Petition, in determining the amount and timing of distributions** to be made by the Foundation to the Authority, or by the Foundation for the benefit of the Authority.

Petition, at 29 (emphasis added). In contrast, the Authority argues in the Motion:

The Foundation was created to receive, invest and expend non-appropriated state funds, and it is in no way entitled it to base performance of its duties

upon receipt of information related to the management and operation of the Authority.

Motion, at 3 (emphasis added); *see also Counterclaim Petition*, at ¶ 27(D) (requesting a declaratory judgment that the Foundation’s assets are “held in constructive trust by the [Foundation] for the benefit of the [Authority].”).

There could be no clearer illustration of an actual controversy. It is obvious from the above-quoted language that the two parties are taking adverse positions with regard to the issue of the Foundation’s authority to consider relevant facts when making distributions to and/or for the benefit of the Authority. The Foundation takes the position in the Petition and this Response that it has such authority, and the Authority takes the position in the Counterclaim Petition and the Motion that the Foundation does not have that authority, i.e. there is a controversy as to that issue.

This controversy easily meets the requirements for justiciability under Oklahoma law: the starkly contrasting positions taken by the parties demonstrate that the dispute is definite and concrete in nature, the dispute obviously relates to the extent of the Foundation’s legal rights, the parties’ interests in the resolution of the issue are clearly adverse, and the dispute is capable of resolution by a declaration from the Court that the Foundation has the right to consider all relevant facts when making decisions as to the timing or amount of distributions to the Authority. *Easterwood*, 2002 OK CIV APP 41 at ¶ 11.

Furthermore, the Petition describes a litany of antagonistic conduct undertaken on the part of the Authority in response to the Foundation’s attempts to obtain necessary information to fulfill the Foundation’s duties, such as demands from the Authority that the Foundation immediately transfer funds to the Authority, accusations that the Foundation is “withholding funding and jeopardizing the Authority’s ability to carry out its state-mandated

mission," and the service of a preservation of evidence letter on the Foundation. *See Petition*, at ¶¶ 25, 137. The fact that the Authority has engaged in such conduct towards the Foundation, in apparent anticipation of litigation between the parties over the very issue raised in the Petition, negates any contention that no actual controversy exists between the parties.

Finally, the Foundation would note that the Authority takes the position that no actual controversy exists between the parties despite the fact that the Authority has filed a counterclaim for declaratory relief against the Foundation in which the Authority states:

[T]he Authority seeks declaratory judgment against Plaintiffs pursuant to 12 O.S. § 1651 et. seq. that **an actual, justiciable controversy exists between the parties** and a declaratory judgment setting forth their rights and obligations to the funds is necessary.

Counterclaim Petition, at ¶ 36 (emphasis added). The Authority's argument in the Motion that there is no actual controversy between the parties is completely inconsistent with the position taken by the Authority in its Counterclaim Petition, laying bare the disingenuous nature of this argument.

Furthermore, the Authority's counterclaims request that the Court issue a declaratory judgment to the effect that the Foundation's assets are held in constructive trust for the benefit of the Authority, and that the Authority has the right to demand the immediate transfer of all the Foundation's assets to another entity designated by the Authority. *Id.* at ¶ 37. The nature of the Authority's counterclaims, which amount to not only an utter denial of the Foundation's right to independence and autonomy as asserted in the Petition, but an attempt by the Authority to expropriate the Foundation's assets against its will, removes any possible lingering doubt that an actual controversy exists.

It is clear from the pleadings in this case that there is currently an actual controversy

between the parties as to the Foundation's right to consider all facts in determining the amount and timing of distributions to be made by the Foundation to the Authority, conferring upon the Court the authority to issue a declaratory judgment in this matter.

III. A Declaratory Judgment Will Resolve the Controversy Giving Rise to This Litigation.

Finally, the Authority argues in the Motion that the Court should deny declaratory relief because a declaratory judgment will not terminate the controversy between the parties. This argument is wholly lacking in merit because declaratory relief will resolve the controversy as to the Foundation's legal rights described in the Petition.⁴

Allowing a party to obtain a declaration of its legal rights in order to resolve uncertainty and allow the party to direct its conduct going forward so as to avoid future litigation is a valid and recognized purpose for the use of district courts' declaratory judgment powers. *Miller v. Gonzales*, 2010 OK CIV APP 56, ¶ 17, 239 P. 3d 163 ("A declaratory judgment action is meant to ascertain uncertain rights and can be used before any actual breach."). "The Oklahoma Supreme Court recognizes that a declaratory judgment action 'is especially useful in a case where a justiciable controversy between the parties exists and the plaintiff would be required to do or refrain from doing some action at his legal peril.'" *Dean v. State ex rel. Doak*, 2012 OK CIV APP 105, ¶ 14, 292 P.3d 58, 62 (citing *Conoco, Inc. v. State Dep't of Health*, 1982 OK 94, ¶ 18, 651 P.2d 125, 131).

As described in detail above, the Petition asks the Court to resolve one specific legal question: whether the Foundation has the right to consider all facts, including those described

⁴ Bizarrely, the Authority takes the position that declaratory relief would not resolve the underlying controversy giving rise to the litigation despite the fact that the Authority itself has also requested the Court issue a declaratory judgment in this case, in its counterclaim filed on the same day as the Motion.

in the Petition, in determining the timing and amount of distributions to the Authority. *See Petition*, at 29. A declaratory judgment affirming that the Foundation may do so will resolve the uncertainty created by the Authority's allegations to the contrary, allowing the Foundation to exercise its lawful discretion in furtherance of its purpose without being subjected to the risk of potential litigation filed by the Authority, along with the Authority's demands that it is entitled to immediate payment, accusations that the Foundation is jeopardizing the Authority's existence, claims that the Foundation is violating state law, and claims that the Foundation is not fulfilling its tax-exempt mission. *See Dean*, 2012 OK CIV APP 105 at ¶ 14, 292 P.3d at 62.

To be certain, the scope of the ongoing conflict between the Authority and the Foundation is not limited to a dispute as to the Foundation's legal rights. Even a cursory review of the pleadings in this matter reveals that there are deep differences of opinion between the parties regarding issues such as the proper division of power/responsibility between the parties, the proper use of the parties' respective resources, etc. However, there is no requirement under Oklahoma law that a declaratory judgment must resolve each and every point of disagreement between the parties to a declaratory judgment action; the Court is merely vested with **discretion** to elect not to grant declaratory relief if doing so would not be helpful because it "would not terminate the controversy, **or some part thereof**, giving rise to the proceeding." *See OKLA. STAT. tit 12, § 1651* (emphasis added).

Here, a declaratory judgment will resolve the central aspect of the controversy that is capable of being resolved via court action by affirming the Foundation's legal right to autonomy and independence, and will hopefully guide the parties towards a resolution of the larger underlying conflict between them that will not require further litigation. For

this reason, the Court should not refuse the Foundation's request for a declaratory judgment in this matter.

Conclusion

For all of the foregoing reasons, the Foundation respectfully requests that the Motion be denied, and that it be awarded all other relief to which it may be entitled.

ROSENSTEIN, FIST & RINGOLD, INC.

By: 
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**ATTORNEYS FOR PLAINTIFF,
OKLAHOMA EDUCATIONAL
TELEVISION AUTHORITY
FOUNDATION, INC.**

CERTIFICATE OF DELIVERY

I hereby certify that the above and foregoing instrument was mailed, via first class mail, proper postage thereon fully prepaid, this 4th day of January, 2019, to:

Michael Burrage
Patricia A. Sawyer
J. Renley Dennis
512 North Broadway, Suite 300
Oklahoma City, OK 73102


Kent B. Rainey

AGREEMENT

This Agreement is made and entered into this 26th day of February, 1992, by and between the Oklahoma Educational Television Authority, a public board licensed by the Federal Communications Commission ("FCC"), (hereinafter known as "OETA"), and the Oklahoma Educational Television Authority Foundation, Inc., a corporation organized under the laws of the State of Oklahoma (hereinafter known as "Foundation").

RECITALS

WHEREAS, OETA and the Foundation have developed a successful funding partnership between public and private financing resources to insure the proper and steady growth of educational and public television services to all the citizens of Oklahoma; and

WHEREAS, pursuant to Title 70 O.S., §23-101, the Oklahoma Legislature stated its intent and purpose to make educational television services available to all Oklahoma citizens on a coordinated statewide basis under the direction and supervision of the Oklahoma Educational Television Authority; and

WHEREAS, the OETA Foundation, Inc. is a private, non-profit organization and was established in 1983 as a result of S.B. 454 passed by the 1982 Oklahoma Legislature, which expressed legislative intent that the Oklahoma Educational Television Authority seek ways to encourage contributions in the private sector by cooperating with a non-profit foundation; and

WHEREAS, since its inception in 1983, the Foundation has operated for the exclusive purpose of receiving, investing and expending privately donated non-state appropriated funds for educational and eleemosynary purposes related to the support, promotion, development and growth of educational and public broadcasting in Oklahoma; and

WHEREAS, the Foundation has been and continues to be an excellent model of a private,



non-profit organization created to support the growth of educational and public broadcasting; and

WHEREAS, the Foundation has established relationships of mutual trust and confidence with its many private contributors and, to insure financial accountability, has annually been audited by an independent certified public accountant; and

WHEREAS, the inherent reason for the Foundation's success has been the ability of the Foundation to assure its many private contributors that their donations will enhance the quality of public programming and will not merely be considered as replacement funds for legislative appropriations; and

WHEREAS, the Foundation has successfully raised private funds from citizens, corporations and foundations to pay for programming and programming related expenses and such programming purchases on behalf of OETA have resulted in more and better offerings to the public; and

WHEREAS, both OETA and the Foundation reaffirm their long-standing commitment to autonomy and independence of judgment in programming and broadcast matters and in the belief that this agreement further accomplishes that end; and

WHEREAS, the OETA and the Foundation are separate legal entities, both existing for the purposes of support, promotion, development and growth of educational and public broadcasting in Oklahoma, it is the desire of the respective parties to enter into this Agreement to delineate mutually supportive obligations and responsibilities, while maintaining separateness of function and accountability to the public hereby served; and

WHEREAS, Heritage Media Corporation has donated the Channel 43 license, transmission line, antenna, transmitter and master control equipment in Oklahoma City to the Oklahoma Educational Television Authority; and

WHEREAS, the OETA Foundation has established its new headquarters at 11901 N. Eastern through the acquisition of the remaining Channel 43 assets including 95 acres of land, a 20,000 square foot studio/office facility and 1595 foot tower.

NOW, THEREFORE, for adequate and sufficient consideration of which are acknowledged, it is hereby agreed, understood and acknowledged by and between OETA and the Foundation that:

1. The Foundation will provide to OETA designated public programming, including programming development and promotion, all to be paid for by Foundation funds derived from private contributions from individuals, corporations, and foundations.
2. The Foundation will assist OETA by providing non-commercial, educational and public television programming, the necessary office/studio/tower space and staff for the operations of Channel 43.
3. The Foundation will provide management of the Programming Endowment that was established in 1983 and that funds for the Endowment will continue to come from such funding sources as program underwriting, endowment grants, unrestricted grants, interest earned on investments, carry-over funds, if any, and planned giving.
4. The Foundation will be responsible for paying for programming, promotion and development staff salaries, Foundation facilities, development activities, new program development, as well as specific components of OETA's programming schedule (as described in paragraph 1).
5. In the interest of insuring that OETA funds and Foundation funds remain separate and can be properly accounted for, the Foundation will reimburse actual cost to OETA for employees' time and facilities use during development and fundraising activities.
6. In the interest of insuring that OETA funds and Foundation funds remain separate and can be properly accounted for, the Foundation will reimburse OETA fair market value cost for the utilization of office space on an as-needed basis by Foundation employees in accordance with state procedures and law.
7. All state funding will flow into OETA and that OETA will pay for OETA staff salaries, on-air operations and other operating expenses, OETA facilities and equipment, local

productions such as news or coverage of the legislature.

8. OETA has legal responsibility for all operations and programming.

9. OETA retains the ultimate responsibility for anything it broadcasts and, therefore, must retain the right to reject or refuse any programs which OETA believes to be unsatisfactory or unsuitable or contrary to the public interest. OETA retains the right to preempt any and all programs in the event of great urgency or importance to satisfy its public interest standard.

10. Both OETA and the Foundation are governed by their respective separate existing Boards.

11. In the interest of insuring ongoing communication and encouraging cooperation, the OETA and the Foundation agree to create a Joint Coordinating Council consisting of the officers of both Boards to serve as a forum for developing general policy and for making necessary recommendations to the respective Boards of OETA and the Foundation, if needed.

12. Either party may terminate this Agreement upon sixty (60) days written notice to the other party. Notice shall be in writing and shall be deemed to have been duly given if personally delivered or mailed certified mail, return receipt requested:

a. if to OETA, to:

Executive Director
Oklahoma Educational Television Authority
7403 N. Kelley Avenue
Oklahoma City, OK 73113

b. if to Foundation, to:

Manager
Oklahoma Educational Television Authority Foundation
11901 N. Eastern Avenue
Oklahoma City, OK 73131

or at such address as any party may, from time to time, furnish to the other party by a notice given in accordance with the provisions of this paragraph.

13. This Agreement is the complete and entire agreement and supersedes any and all other Agreements either oral or in writing between the undersigned parties. This Agreement shall be modified only by subsequent writing signed by the parties hereto.

14. This Agreement shall be governed by and construed in accordance with the laws of the State of Oklahoma.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first written above.

Carri Abernathy Bell
Carri Abernathy Bell, Chairman
OKLAHOMA EDUCATIONAL TELEVISION AUTHORITY

Subscribed and sworn to before me this 15th day of April, 1992.

Judge A. Eller
Notary Public

My Commission Expires:
3-13-95

Edwin E. Vineyard
Dr. Edwin E. Vineyard, President
OKLAHOMA EDUCATIONAL TELEVISION AUTHORITY
FOUNDATION

Subscribed and sworn to before me this 15th day of April, 1992.

Judge A. Eller
Notary Public

My Commission Expires:
3-13-95